SITE: Smoky Mountain
BREAK: J 17.1
OTHER: J3

Westlaw.

746 S.W.2d 706
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(Cite as: 746 S.W.2d 706)

C

Court of Appeals of Tennessee,
Eastern Section.
Sue Morrison BOATMAN and Walter Coppinger,
Co-Administrators of the Estate of
Garnett Morrison, Plaintiffs-Appellees,
v.
Catherine MORRISON, Defendant-Appellant.

Nov. 19, 1987.
Permission to Appeal Denied by
Supreme Court March 7, 1988.

The Chancery Court, Roane County, Frank V. Williams, III, Chancellor, entered judgment ordering sister to reimburse administrators for state and federal inheritance taxes paid and determining that contents of safety deposit box were part of estate of brother, and sister appealed. The Court of Appeals, Franks, J., held that: (1) sister who held certificates of deposit of decedent could be required to pay any inheritance taxes owed by estate in which the certificates created tax liability; (2) computing taxes based on relationship of sister's share of estate to total taxable estate did not violate equal protection; and (3) gift of contents of bank safety deposit box containing bonds was not established.

Affirmed as modified; cause remanded.

West Headnotes

[1] Taxation 3344
371k3344 Most Cited Cases
(Formerly 371k889)
Person who received certificates of deposit from estates after one brother died intestate, and second brother, who had jointly held certificates with right of survivorship with first brother, left certificates to person, could be required to pay any inheritance taxes owed by estate in which certificates created tax liability, although person claimed inheritance tax should have been taxed to second brother's estate and time allowed by statute to file claim in second brother's estate had expired; statutory time limit on filing claim against estate only bars claims against estate and does not bar creditor who may have other legal remedies. T.C.A. §§ 30-2-310, 30-2-614.

[2] Constitutional Law 229.1
92k229.1 Most Cited Cases

[2] Taxation 3428
371k3428 Most Cited Cases
(Formerly 371k953)
Computation of taxes based on relationship of estate share of person who inherited to total taxable estate did not violate equal protection; statutes specifically provides for proration of tax from persons interested in estate, although before statutory enactment, burden of paying estate taxes devolved upon residuary estate. T.C.A. § 30-2-614; U.S.C.A. Const.Amend. 14.

[3] Gifts 17.1
191k17.1 Most Cited Cases
(Formerly 191k17)
Gift of contents of bank safety deposit box containing bonds was not effective, although box contained memo in decedent's handwriting noting that bonds were to be payable to his sister upon his death and that memo was signed by decedent, and sister had in her possession at time of death key to box and had been given some of the income generated by the bonds; sister was not entitled to enter box under contract with bank, sister claimed ownership of all the bonds, and there was no evidence of any delivery.

[4] Wills 205
409k205 Most Cited Cases
Issue of whether memo in decedent's handwriting that noted bonds were to be payable to his sister upon his death and that was signed by decedent was valid holographic will was not properly before Court of Appeals on appeal from judgment that, inter alia, determined contents of safety deposit box were part of estate of brother.

[5] Wills ⚿205
409k205 Most Cited Cases
Judicial determination of character and validity of written instrument as testamentary devise is determined upon offering document for probate in proper court.

[6] Wills ⚿205
409k205 Most Cited Cases
Until document is probated as will it has no legal effect.

*707 Gerald Largen, Kingston, for defendant-appellant.

Jack H. McPherson, Jr., Kingston, for plaintiffs-appellees.

OPINION

FRANKS, Judge.

The defendant appeals from a judgment ordering her to reimburse the administrators for state and federal inheritance taxes paid in the amount of $19,217.95 and the determination that the contents of a safety deposit box are part of the estate of Garnett Morrison.

Garnett Morrison died intestate in June, 1980 and a few days later his brother Tom Morrison, died testate, leaving to Catherine certificates of deposit, which he jointly held with the right of survivorship with Garnett.

*708 Catherine received a total of $68,146.00 via deposit certificates from the two estates. The value of the deposit certificates was included in the tax returns filed in the estate tax returns of Garnett Morrison and the administrators paid the total taxes assessed from the proceeds of the estate in their possession.

[1] Defendant insists she should not be taxed in Garnett's estate on money she inherited from her brother Tom's estate. She claims the inheritance tax should have been taxed to Tom's estate and further insists the time allowed by the statute to file a claim in Tom's estate has expired and she should take free of any inheritance tax. [FN1]

FN1. The tax is not levied on the property but rather on the privilege of inheriting. *McReynolds v. Tidwell*, 488 S.W.2d 366 (Tenn.1972).

Under T.C.A., § 30-2-310, claimants are required to file a claim against an estate within six months of a notice to creditors; however, the statute only bars claims against the estate and does not bar a creditor who may have other legal remedies. *See Third National Bank in Nashville v. Brown*, 691 S.W.2d 557 (Tenn.App.1985). Defendant, as holder of the certificates of decedent, may be required to pay any inheritance taxes owed by the estate wherein the certificates create a tax liability. T.C.A., § 30-2-614.

[2] Defendant also charges the tax computed upon her portion of the estate violates the Equal Protection Clause of the Constitution, since the taxes were computed on the relationship of her share of the estate to the total taxable estate, which was $600,869.46. T.C.A., § 30-2-614 specifically provides for pro-ration of the tax from the persons "interested in the estate". Prior to the statutory enactment, the burden of paying the estate taxes devolved upon the residuary estate. Inheritance and estate tax statutes have been ruled constitutional. *See Riggs v. Deldrago*, 317 U.S. 95, 63 S.Ct. 109, 87 L.Ed. 106 (1942); *Coolidge v. Long*, 282 U.S. 582, 51 S.Ct. 306, 75 L.Ed. 562 (1931); *State v. Alston*, 94 Tenn. 674, 30 S.W. 750 (1895). The statute directs the tax will be "equitably pro-rated" among the persons interested in the estate and the evidence does not preponderate against the chancellor's factual determination that the amount of tax pro-rated to defendant was the proper amount.

[3] The remaining issue is the ownership of the contents of a bank safety deposit box, which contained $8,000.00 in Series H. bonds and $40,000.00 in coupon bonds for the City of Elizabethton. These bonds were apparently purchased in May of 1972. The box also contained a memo on a Kingston Bank and Trust Company statement that deceased was withdrawing money from that bank to purchase Elizabethton bonds. The memo, in decedent's handwriting, noted the bonds were to be payable to his sister, Catherine, upon his death and was signed by deceased.

Defendant maintains that the contents of the box

belonged to her since she had in her possession at the time of death a key to the box and had been given some of the income generated by the bonds. While she was in possession of one of the keys to the box, she was not under the contract with the bank entitled to enter the box.

Defendant relies on *Collins v. McCanless*, 179 Tenn. 656, 169 S.W.2d 850 (1943), wherein the court held that possession of a key to a safety deposit box without the right of entry, coupled with the sharing of coupon interest, constituted constructive delivery of one-half interest in certain bearer bonds in the safety deposit box. The *Collins* court concluded, since the gift involved a one-half undivided interest in the chattel, coupled with the clear donative intent of the donor, on the facts of that case a constructive delivery had occurred. In the instant case, defendant claims the ownership of all the bonds and there is no evidence of any delivery. The familiar rule establishing a gift *inter vivos* is that a gift does not become effective until complete control of the gift is surrendered by the donor and acquired by the donee. ***709***Brown v. Vinson*, 188 Tenn. 120, 216 S.W.2d 748 (1949).

[4][5][6] Finally, defendant argues she owns the Elizabethton bonds since the memo is a valid holographic will. [FN2] This issue is not properly before the court. A judicial determination of the character and validity of a written instrument as a testamentary devise is determined upon offering the document for probate in the proper court. *Zuccarello v. Erwin*, 2 Tenn.App. 491 (1926). Moreover, until a document is probated as a will it has no legal effect. *Weaver et al. v. Hughes*, 26 Tenn.App. 436, 173 S.W.2d 159 (1943).

FN2. The Chancellor concluded the document was not a will.

The judgment of the trial court is affirmed, as modified, and the cause remanded, with costs incident to the appeal assessed to appellant.

SANDERS, P.J. (E.S.), and WILLIAM H. INMAN, Special Judge, concur.

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